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SUBJECT: May 3 EU-U.S. JHA Ministerial Troika

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11. Summary. The U.S. - EU JHA Ministerial Troika was held in Vienna May 3 with the U.S. delegation led by Attorney General Alberto Gonzales, accompanied by DHS Deputy Secretary Michael Jackson. The EU delegation was headed by

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Austrian Minister of the Interior Prokop, Justice Minister Gastinger and EU Commissioner Frattini. The participants stressed the importance of jointly addressing common problems such as terrorism, organized crime, border and document security, and pledged to expand cooperation and data exchange in many of these areas. With regard to the Visa Waiver Program (VWP) the EU urged the establishment of a joint U.S.-EU timeline, but DHS Deputy Secretary Jackson rejected any firm timeline for VWP expansion. Both sides did agree to exchange technical and other information on the issue during the May 16 visit of Commission officials to Washington related to the publication of a July 1 Commission report. On the U.S.-EU MLAT, the Austrian Presidency pledged to keep the pressure on the 4 member states that have yet to sign the bilateral protocol with the U.S. Both sides expressed frustration over the issue of data protection which was hindering the negotiation of a U.S. cooperation agreement with EUROJUST and likely to provoke an extended debate in the European Parliament. The Attorney General underlined the commitment of the U.S. to the rule of law in fighting terrorism and said he looked forward to the continuation of the dialogue on this issue. The May 3 meeting was followed by a May 4 multi presidency meeting with the U.S. and Russia and a May 4-5 EU Internal Security Ministerial (reported separately). End Summary

Agenda Item One - Visa Reciprocity

12. (SBU) Commissioner Frattini opened the Ministerial Troika by welcoming President Bush's commitment to pursue extension of the visa waiver program (VWP) by means of the roadmap process. He noted the Council's February conclusions that directed the Commission to submit a follow-up report on visa reciprocity by July 1. [Note: Because of translation requirements, the text of the report will be finalized shortly after Jonathan Faull's May 16 visit to Washington. End note.] Commissioner Frattini stressed the need for the roadmap process to show tangible results. "To keep it credible, we need results," he said, calling for "a real, concrete timeframe." He posed three questions in

concluding his remarks: 1) How does he USG see the way forward? 2) What are the concrete results of the roadmap process? 3) Could the USG consider visa facilitation (streamlined application procedures, reduction of fees, etc.) as a transitional option?

¶3. (SBU) DHS Deputy Secretary Jackson reaffirmed President Bush's commitment to engage in a deliberative, good faith effort with each of the roadmap countries. He noted the parallels with internal EU efforts and said the U.S. would like to "synchronize" efforts with the Schengen evaluation process. He welcomed a multilateral approach while stressing the congressional mandate to evaluate each country individually in accord with statutorily established criteria.

¶4. (SBU) Interior Minister Prokop noted the U.S. and EU were taking steps in parallel and said the Schengen expansion could dovetail with VWP expansion and suggested a common timeframe. She noted that important security upgrades -- the Visa Information System (VIS), Schengen Information System upgrade (SIS2) and biometrics passports -- would enhance border controls in the roadmap countries. Commissioner Frattini specified the following timelines: by August 2006, biometrics passports for all Member States; by Spring 2007, VIS/SIS2 online; by October 2007, all new Member States fully incorporated into Schengen. DHS Deputy Secretary Jackson rejected any firm timeline for VWP

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expansion.

¶5. (SBU) Commissioner Frattini proposed a technical level working group on the margins of the Commission's May 16 visit to Washington in order to obtain a "clearer and deeper exchange of concrete information on a state-by-state basis." The EU would provide information on the Schengen evaluation process with respect to the non-visa waiver countries and the U.S. would provide information on the roadmap process, both as they relate to enhancing security. DHS Deputy Secretary Jackson said he was willing to assist Commissioner

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Frattini as the Commission drafted a follow-up report to the

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Council. DHS Deputy Secretary Jackson agreed to Commissioner Frattini's proposal for a technical working group.

Agenda Item Two - Document Security

¶6. (SBU) Biometric passports: Interior Minister Prokop said the EU would allow legitimate authorities at ports of entry to access the biometric chips of new e-passports, which would be protected by "basic access control". She stressed that testing with readers was important to ensure interoperability and noted the upcoming conference on May 31 in Berlin, co-sponsored by Germany and the Commission, for that purpose. Interior Minister Prokop said that the EU, U.S., Canada and Australia would be invited. DHS Deputy Secretary Jackson welcomed the technical meeting in Berlin,

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stressing the importance of interoperability. He extended an invitation for the EU to observe live tests with biometric documents from VWP countries seeking certification from DHS.

¶7. (SBU) Interior Minister Prokop also noted the EU was in the process of finalizing the technical standards for incorporating fingerprints into national passports. She said that EU Member States would be required to begin issuing passports with dual biometrics (digital photograph

and finger scans) by June 2009. The regulation on technical standards would also allow for the possibility of transferring data to third countries. [Note. In a separate meeting on May 4 with the Austrian official responsible for e-passports, Heinrich Pawlicek told Embassy Vienna and USEU that only two finger scans would be collected for passport applications and they would be protected by "extended access control". Fingerprints would be used for one-to-one checks only at the European level as a measure to enhance document security. EU Member States, however, would have the freedom to run the fingerprints against criminal databases at a national level as part of the issuance process. End note.]

¶18. (SBU) Lost/Stolen Passports: Interior Minister Prokop reviewed the EU's common position on sharing lost/stolen passport information with Interpol and said that the EU is that largest supplier of data. She noted that once SIS2 was functioning, transfer of data would be facilitated. Following up on the joint U.S.-EU mission to Interpol in January, Interior Minister Prokop said that Austria was prepared to offer a round-the-clock service to answer inquiries and resolve hits. She asked about the status of the U.S. pilot to analyze the workload implication for extending access to the database to end-users at ports of entry.

¶19. (SBU) Interior Minister Prokop lamented that only 15 EU Member States have confirmed they are using the database. She said that a technical meeting on May 16 (venue undetermined) would analyze why the Interpol database was not being better utilized. Participants would also analyze Switzerland's current method of systematically querying all data from consulates and ports of entry against the Interpol database.

¶10. (SBU) Deputy Secretary Jackson noted DHS's new reporting requirement on lost/stolen passports for VWP countries and gave a positive assessment of the joint mission to Lyon. He said that more information should be provided on lost/stolen passports and briefly touched upon the potential value of additional information fields. DHS Deputy Secretary Jackson urged that lost/stolen passports intercepted by authorities should be seized. He also called for common reporting mechanisms.

Agenda Item Three - Counter-Terrorism

¶11. (SBU) Radicalization and Recruitment: Interior Minister Prokop recalled EU adoption of its Counter-terrorism strategy in December, which focused on Islamic fundamentalism and aimed to prevent radicalization and recruitment and encourage moderate Islamists by all diplomatic means. She urged ratification of all anti-terrorist conventions, the adoption of a media strategy and a common definition of terrorism, as well as a focus on cyber-crime. She noted the many meetings on these subjects taking place during the Austrian Presidency.

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¶12. (SBU) The Attorney General agreed on the need to encourage moderate Islamists to speak out and called for an international consensus to combat terrorism. He noted the necessity to balance free speech and incitement and agreed on the need to prevent the use of the internet by terrorists. He urged that the EU and U.S. work together on the issue of radicalization and recruitment, noting his concern over Jihadists who come to Iraq and then leave to spread terrorism elsewhere. He urged the identification of "best practices" to prevent radicalization, especially in prisons and schools and suggested that we look at revising criminal statutes to deal with such things as payments to the families of bombers, etc.

¶13. (SBU) Commissioner Frattini noted that the Commission had established a permanent group on radicalization and recruitment, which has issued a tender for a study of violent radicalization. He saw this as an issue ripe for transatlantic cooperation, especially in the area of threat analysis and information exchange. He also saw a need for a clear definition of incitement, especially when the internet was used to spread terrorist propaganda and bomb-making instructions. He urged a focus on critical infrastructure protection where public/private cooperation was absolutely essential.

¶14. (SBU) EUCounter-Terrorism Chief DeVries urged that Eurojust be strengthened to fight against terrorism and the Finnish representative said that the Finnish Presidency would concentrate on internet crime and radicalization and recruitment. Interior Minister Prokop urged practical cooperation between the U.S. and EU and Justice Minister Gastinger again encouraged the ratification of all outstanding anti-terrorist conventions.

¶15. (SBU) Critical Infrastructure protection and consequence management: Interior Minister Prokop described EU actions in this field, including the creation of a manual on crisis management with contact points. Commissioner Frattini called for greater U.S.-EU cooperation in this field in order to optimize resources and expertise. He urged the creation of a rapid response mechanism and noted that the Argus system linked EU emergency systems together in case of terrorist or health crisis.

¶16. (SBU) DHS Deputy Secretary Jackson agreed that it was essential to cooperate in this field, noting that the U.S. is spending large sums on explosive detection technology and there were many advantages to joint R & D on such projects. He said the U.S. has learned some hard lessons regarding infrastructure protection and had just established a new directorate to deal with the problem. We were willing to share our experience with the EU. He agreed on the need to encourage public/private partnerships, particularly in areas such as chemical security.

¶17. (SBU) Counter-Terrorism and Human Rights: Interior Minister Prokop noted that maintaining western values was the best way to fight terrorism and expressed her appreciation that State Department Legal Adviser John Bellinger was willing to participate in a dialogue on these issues. Justice Minister Gastinger cited the alleged difference of approach between the EU and the U.S. in fighting terrorism as one source of the problem. The U.S. saw this as a "war, whereas the EU was more concerned with the rule of law. She said the EU wants to cooperate with the U.S. on the basis of trust and confidence and be seen as a reliable partner. She urged that the dialogue continue in order to forge a common approach to the problem.

¶18. (SBU) The Attorney General replied that the U. S. is committed to the rule of law, although we do see the fight against terrorism in a different perspective than the EU. It does involve a military campaign, but we also use laws to persecute terrorists, when applicable. The EU has its own laws and instruments, some of which do not exist in the U.S. He said that he understood the U.S. had much at stake in promoting human rights and it was important that the U.S. position be clearly and correctly understood. He therefore looked forward to continuation of the dialogue.

¶19. (SBU) EU Counter-Terrorism Chief DeVries noted a delegation from the European Parliament would soon be visiting Washington to discuss these issues and hoped that the dialogue in Washington would be a fruitful one.

Agenda Item 4 - EU-US MLA and Extradition Agreements

¶20. (U) Justice Minister Gastinger noted that it has been three years since the negotiation of the U.S.-EU MLAT and 21 of 25 bilateral protocols necessary to implement it had been signed. She urged the Czechs, Italians, Maltese and Poles to sign as soon as possible and said that the Austrian Presidency would keep the pressure on EU Member States to sign and ratify the agreements.

¶21. (U) The Attorney General thanked the Austrian Presidency for its efforts and hoped that once all EU Member States had signed there could be a public event to mark the occasion. He said the U.S. would await the signature to the protocols by all EU Member States before submitting the MLAT to the U.S. Congress for its ratification. He also indicated that we would have to jointly consider how best to train our respective practitioners on how to use these instruments

Agenda Item 5 - EU-U.S. Operational Cooperation

¶22. (SBU) Organized Crime Threat Assessment: Commissioner Frattini said that the Commission has done an analysis of organized crime which indicates four categories of threat - a) indigenous; b) ethnic; c) organized networks; and d) others such as biker gangs, etc. All were involved in various aspects of crime, including drug trafficking, fraud, cyber-crime, money laundering and theft of intellectual property. EUROPOL Head Ratzel noted that there was no common EU threat, but distinct regional patterns. He praised U.S.-EU cooperation.

¶23. (SBU) The Attorney General indicated his own interest in this area and pledged to share U.S. threat assessments. He also expressed a willingness to provide training and other assistance.

¶24. (SBU) Operational Cooperation with Europol: Interior Minister Prokop emphasized that multilateral cooperation should not interfere with bilateral efforts. EUROPOL head Ratzel recalled his recent visit to Washington and the support he received there related to exchange of best practices and expanded training opportunities, including the FBI Academy and CEPOL. He noted two areas of concern - first that the current EUROPOL convention did not allow the sharing of some analytical data with the U.S. and secondly the fact that the FBI was unsure of the validity of confidential exchanges with EUROPOL. He urged EU Member

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States to ratify the relevant EU proposed protocols which would correct the former situation and said he would attempt to work out the latter issue with the FBI. Interior Minister Prokop added that EU Member States are interested in exchanging data and a way must be found to share and protect it.

¶25. (SBU) Negotiation of a Cooperation Agreement with Eurojust: Justice Minister Gastinger expressed her frustration at the delay in negotiating a U.S. - EUROJUST cooperation agreement, noting that the issue of data protection was a problem which she hoped could be overcome when U.S.-EUROJUST negotiations began again in mid-May. EUROJUST Chief Kennedy agreed that the key was how to balance data protection and the sharing of information. He expressed EUROJUST's willingness to host a conference of counter-terrorist prosecutors. Commissioner Frattini urged that child pornography also constitute an element of U.S. cooperation with EUROJUST.

¶26. (SBU) The Attorney General said he welcomed expanded cooperation on child pornography and asked why the EUROJUST agreement could not be modeled on the one the U.S. has with EUROPOL. EUROJUST Chief Kennedy replied that new data privacy rules had come into effect and the situation was now

completely different.

¶27. (SBU) Cooperation in Law Enforcement Training:
Commissioner Frattini saw the possibility of CEPOL and FBI cooperation as very promising and said the EU was very interested in expanding this. The Attorney General welcomed an expansion of training.

Agenda Item 6 - Framework Decision on Data Protection

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¶28. (SBU) Interior Minister Prokop said this was an ongoing difficult debate in the European Parliament and between Member States. Justice Minister Gasteringer agreed, noting that different Member States have taken completely opposing positions on the draft framework proposal. The need was to find a balance between law enforcement requirements for data exchanges and protection of the rights of citizens - it may take awhile. Commissioner Frattini said there was a risk that the European Parliament may hold the framework decision hostage to other issues, but he claimed that existing U.-EU agreements would not be affected, whatever the outcome.

¶29. (SBU) The Attorney General welcomed the assurances provided by Commissioner Frattini, but said he remained concerned about the effect on current informal arrangements to exchange information. He hoped this could be resolved by the experts. DHS Deputy Secretary Jackson agreed and noted that since 9/11 the U.S. and the EU had found many creative ways to expand the information flow. He urged that this creativity not be stifled by a more restrictive interpretation. The Finnish representative noted that Finland had hoped to get the draft framework decision adopted during its Presidency, but it no longer looked as if this would be possible.

Agenda Item 7 - International Cooperation Concerning
Pandemic Influenza

¶30. (U) DHS Deputy Secretary Jackson described in detail the just released U.S. implementation plan for the national strategy for pandemic influenza and stressed the President's commitment to this issue. Interior Minister Prokop noted the upcoming June Vienna meeting on this subject and urged the U.S. to share any relevant information with the Minister of Health.

Agenda Item 8 - EU Strategy for the External Dimension of
JHA

¶31. (SBU) Interior Minister Prokop noted the effort by the Austrian President to implement an external JHA strategy, pointing to the forthcoming May 4-5 Multi-Presidency Ministerial and the Internal Security Ministerial. She indicated that the Austrians would introduce action-oriented papers on the Western Balkans and Afghan drug trafficking.

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